

## Scholarly Commons @ UNLV Boyd Law

---

Nevada Supreme Court Summaries

Law Journals

---

7-2-2022

### Bennett v. State, 138 Nev. Adv. Op. 29 (Apr. 28, 2022)

Anne-Greyson Long

Follow this and additional works at: <https://scholars.law.unlv.edu/nvscs>



Part of the [Criminal Procedure Commons](#)

---

This Case Summary is brought to you by the Scholarly Commons @ UNLV Boyd Law, an institutional repository administered by the Wiener-Rogers Law Library at the William S. Boyd School of Law. For more information, please contact [youngwoo.ban@unlv.edu](mailto:youngwoo.ban@unlv.edu).

Criminal Law: Granting Evidentiary Hearings under NRS 34.970(3)(2)(b)

## Summary

Years after a jury sentenced Bennett to death, newly discovered evidence was presented. This case thoroughly explains whether a new evidentiary hearing must be granted. The statutory scheme providing for a petition to establish factual innocence is a relatively new addition to Nevada law.<sup>2</sup> *Bennett v. State* provided an opportunity to address the statutory provisions that guided the district court's decision whether to order a hearing on this type of petition. The Court clarified two considerations relevant to the pleading requirements a petition must satisfy under NRS 34.960(2)(b): (1) a petition may rely on a witness's recantation of trial testimony as newly discovered evidence provided the recantation is not the only new evidence and, (2) a petition may rely on newly discovered evidence that conflicts with a trial witness's testimony provided the new evidence is substantive and exculpatory. The Court also explained that the district court must treat the newly discovered evidence as credible. The district court here denied the petition without conducting an evidentiary hearing which is inconsistent with the applicable statutes. The Court reversed and remanded for the district court to conduct an evidentiary hearing.

## Facts and Procedural History

On March 3, 2001, Joseph Williams was shot and killed by multiple assailants. Three individuals (Bennett, A. Gantt, and one other not named) were identified as being involved in the shooting and were charged with murder. Gantt testified that at a gathering to mourn a person murdered the previous day, Bennett suggested shooting at a rival's home in retaliation. As the group walked through the parking lot, they encountered Williams. Bennett, Gantt, and others spread out and shot Williams. The jury found Bennett guilty of first-degree murder with use of a deadly weapon. Bennett was sentenced by the district court to serve two consecutive terms of life without the possibility of parole. This court affirmed the judgement of conviction and sentence on appeal. Shortly after Bennett's conviction, Gantt signed an affidavit asserting that Bennett was innocent. Gantt said he did not know Bennett or see him the day of the crime. Gantt admitted that he falsely testified against Bennett because he had been threatened with charges and the death penalty. Bennett filed a postconviction habeas petition which the district court denied. This Court affirmed the district court's decision claiming that Gantt's affidavit was not newly discovered given the three-year delay between the affidavit and Bennett filing the petition. Additionally, P. Neal (a witness) testified that Bennett was one of the shooters. Roughly thirteen years later, Bennett filed a petition to establish factual innocence that relied on two new pieces of evidence. The new evidence presented included (1) a declaration from trial witness recanting her testimony identifying Ashley Bennett and (2) an affidavit from a new witness averring that Bennett was not present and did not shoot the victim. The district court denied the petition without conducting an evidentiary hearing.<sup>3</sup>

---

<sup>1</sup> By Anne-Greyson Long.

<sup>2</sup> *Bennett v. State*, 138 Nev. Adv. Op. 29 (Apr. 28, 2022).

<sup>3</sup> *Bennett v. State*, Docket No. 39864 (Order of Affirmance, Oct. 5, 2004).

## Discussion

Bennett argued that the district court erred in denying his petition without conducting an evidentiary hearing. The Court agreed. Under NRS 34.970(3), “the district court shall order a hearing” on a petition to establish factual innocence if the court determines that the petition satisfies the pleading requirements set forth in subsections 2 *and* 3 of NRS 34.960(4) and “that there is a bona fide issue of factual innocence.”<sup>4</sup> In order to satisfy the pleading requirements in subsection 2, the petition “must contain an assertion of factual innocence (made) under oath by the petitioner” and must allege that “newly discovered evidence exists that is specifically identified and, if credible, establishes a bona fide issue of factual innocence.”<sup>5</sup> Subsection 2 also requires that the newly discovered evidence must (1) “establish innocence,” (2) not be “merely cumulative of evidence that was known,” (3) not rely solely upon a witness’s recantation of trial testimony, (4) not be “merely impeachment evidence,” and (5) be “distinguishable from an claims raised in previous petitions.”<sup>6</sup>

The district court must consider the newly discovered evidence in the context of “all other evidence in the case, regardless of whether such evidence was admitted during trial” to determine if the petitioner has satisfied subsection 2.<sup>7</sup> For subsection 3 requirements to be met, the petition must assert that the evidence identified by petitioner as newly discovered was not known and could not have been known at the time of trial.<sup>8</sup> Lastly, in deciding whether to conduct an evidentiary hearing after considering the pleadings, the district court must determine whether there is a bona fide issue of factual innocence.<sup>9</sup> The district court concluded that the evidence did not satisfy the pleading requirements to NRS 34.960(2) because it relied on a witness’s recantation of trial testimony and impeachment evidence. The district court also failed to consider the newly discovered evidence in the context of “all other evidence in the case, regardless of whether such evidence was admitted during trial.” The Court concluded the district court erred in both respects.

## Conclusion

The Court reversed the district court’s order and remanded for an evidentiary hearing. Bennett satisfied the statutory pleading requirements, so NRS 34.970(3) required that the district court order a hearing on the petition.

---

<sup>4</sup> See also NEV. REV. STAT. § 34.960(4) (2020) (providing that “the court shall dismiss a petition that does not meet the requirements of subsection 2 or that meets the requirements of subsection 3, unless the court finds circumstances allowing it to waive the requirements of subsection 3).

<sup>5</sup> § 34.960(2)(a).

<sup>6</sup> § 34.960(2)(b).

<sup>7</sup> § 34.960(2)(d).

<sup>8</sup> See § 34.960(3)(a); see also § 34.930 (defining “newly discovered evidence”).

<sup>9</sup> See § 34.970(3); § 34.910 (defining “bona fide issue of factual innocence”).